

EXHIBIT 12

CLERK OF COURT
SUPERIOR COURT
RIMCN

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NOV 20 2005 PM # 22

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7 IN THE SUPERIOR COURT
8 FOR THE
9 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

10 THE BANK OF SAIPAN, INC.,)
11 Plaintiff,) Civil Action No. 04-0449A
12 vs.)
13 RANDALL T. FENNELL; RICHARD)
14 PIERCE; WHITE, PIERCE, MAILMAN &)
15 NUTTING; DAVID W. AXELROD;)
16 SCHWABE, WILLIAMSON & WYATT;)
17 AND DOES 1-20,)
18 Defendants.)
19)
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RICHARD W. PIERCE'S JOINDER IN
THE OPPOSITIONS TO PLAINTIFF'S
THRESHOLD MOTION FOR SETTING
HEARING DATE FOR IMMUNITY

Time: 9:00 a.m.
Date: November 8, 2005
Judge: Honorable Juan T. Lizama

Richard W. Pierce joins in the oppositions, filed this date, to Plaintiff's Threshold Motion and Request for Hearing on Issue of Immunity. The oppositions are filed by Randall T. Fennell, David W. Axelrod and Schwabe, Williamson & Wyatt.

Submitted this October 21, 2005.

LAW OFFICE OF RICHARD W. PIERCE


RICHARD W. PIERCE
CNMI Bar No. F0165

EXHIBIT 13

1 REXFORD C. KOSACK
2 GLENN A. JEWELL
3 LAW OFFICES OF REXFORD C. KOSACK
Bank of Hawaii Bldg., Third Floor
3 P.O. Box 410
Saipan, MP 96950
4 Telephone: (670) 322-8800

5 Attorneys for Defendant
Randall T. Fennell

7 IN THE SUPERIOR COURT OF THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS

9 THE BANK OF SAIPAN, INC.) Civil Action No. 04-0449A
10 Plaintiff,)
11 vs.)
12 RANDALL T. FENNELL; RICHARD)
13 PIERCE; WHITE, PIERCE, MAILMAN,)
& NUTTING; DAVID W. AXELROD;)
14 SCIIWABE, WILLIAMSON & WYATT,)
AND DOES 1-20,)
15 Defendants.)
16)
17)

**JOINDER IN AXELROD AND
SCHWABE'S OBJECTION TO
EVIDENCE FILED IN SUPPORT
OF DIRECTORS' SO-CALLED
THRESHOLD MOTION**

Judge: Honorable Juan T. Lizama
Date:
Time:

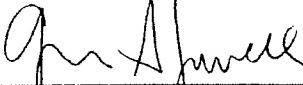
18 Defendant Randall T. Fennell hereby joins in and incorporates by reference "Defendants
19 David Axelrod and Schwabe, Williamson & Wyatt's Objection to Evidence Filed and
20 Referenced in Support of the Bank Directors of Saipan's Threshold Motion and Request for
21 Hearing on the Issue of Immunity" filed October 21, 2005 (the "Objection"). In the Objection,
22 Axelrod and Schwabe object to seven of the 10 documents attached to the "Declaration of
23 Rodney J. Jacob in Support of Addendum to Threshold Motion and Request for Hearing on Issue
24 of Immunity." Fennell joins in and incorporates by reference the Objection in its entirety and
25 states that the referenced documents should be stricken and placed under seal for the reasons
26 stated therein.

27 Fennell also objects to Exhibit 6 to Mr. Jacob's declaration on the grounds that it is
28 protected by the attorney-client privilege and/or work product doctrine and should be stricken

1 and placed under seal for the reasons stated in the Objection.

2 Dated: November 3, 2005.

3 Respectfully submitted,

4 
5 REKFORD C. KOSACK
6 GLENN A. JEWELL

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EXHIBIT 14

1 REXFORD C. KOSACK
2 GLENN A. JEWELL
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5 Attorneys for Defendant
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6

7 IN THE SUPERIOR COURT OF THE COMMONWEALTH
8 OF THE NORTHERN MARIANA ISLANDS

9 THE BANK OF SAIPAN, INC.) Civil Action No. 04-0449A
10 Plaintiff,)
11 vs.)
12 RANDALL T. FENNELL; RICHARD)
13 PIERCE; WHITE, PIERCE, MAILMAN,)
& NUTTING; DAVID W. AXELROD;)
14 SCHWABE, WILLIAMSON & WYATT,)
AND DOES 1-20,)
15 Defendants.)
16)
17)

**OBJECTION TO EVIDENCE
FILED IN SUPPORT OF
DIRECTORS' SO-CALLED
THRESHOLD MOTION**

Judge: Honorable Juan T. Lizama
Date:
Time:

18 Defendant Randall T. Fennell hereby makes the following objections to the following
19 exhibits attached to the "Declaration of Rodney J. Jacob in Support of Threshold Motion and
20 Request for Hearing on Issue of Immunity" filed September 26, 2005. Fennell objects to
21 Exhibits 1 and 14 on the grounds that they are protected by the attorney-client privilege and/or
22 work product doctrine. These documents should be stricken and placed under seal on the
23 grounds stated in "Defendants David Axelrod and Schwabe, Williamson & Wyatt's Objection to
24 Evidence Filed and Referenced in Support of the Bank Directors of Saipan's Threshold Motion
25 and Request for Hearing on the Issue of Immunity" filed October 21, 2005, which reasoning
26 Fennell hereby incorporates by this reference.

CALVO & CLARK LLP
NH II BUILDING MARINA HEIGHTS BUSINESS PARK
PMB 951, Box 10001
SAIPAN, MP 96950
Dkt 11/3/05 4:23p

1 Dated: November 3, 2005.

2 Respectfully submitted,

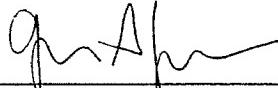
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4 _____
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6 GLENN A. JEWELL
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EXHIBIT 15

COPY of
Original Filed
on this date

JUG 14 2002

Clark
District Court
For The Northern Mariana Islands

UNITED STATES DISTRICT COURT
NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA, Plaintiff,
v.
BERT DOUGLAS MONTGOMERY, DUSEAN BERRICHH and TOMAS B. ALDAN, Defendants.

Criminal Case No. 02-00010
SUPERSEDING INDICTMENT
Title 18, U.S.C., §§ 371, 1343 and 1346 - Conspiracy to Commit Wire Fraud; Title 18, U.S.C. § 1343 - Wire Fraud; Title 18, U.S.C. §§ 1343 and 1346 - Wire Fraud, Deprivation of Honest Services; Title 18, U.S.C. § 1956(b) - Money Laundering Conspiracy; Title 18, U.S.C. § 1956(a)(1)(A)(i) - Money Laundering; Title 18, U.S.C. § 2-Aiding and Abetting; Title 18, U.S.C. § 981(a)(1)(C) and Title 28, U.S.C. § 2461(c)) - Forfeiture

THE GRAND JURY CHARGES THAT:

COUNT ONE

CONSPIRACY TO COMMIT WIRE FRAUD

Relevant Persons and Entities

At all times relevant to this Indictment, The Bank of Saipan (the "Bank") was a bank organized under the laws of the Commonwealth of the Northern Mariana Islands ("CNMI"). The Bank maintained its headquarters in Chalan Kanoa, Saipan, CNMI. The Bank was in the business principally of accepting deposits from customers and extending loans to businesses and individuals. Pursuant to the Bank's loan procedures, all loans in excess of \$250,000 required the approval of the Bank's Board of Directors.

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1 2. From in or about December 2001 until in or about February 2002, the
2 "International Affairs Department" of the Bank purported to further the interests of the Bank in
3 connection with loans to customers who were non-residents of the CNMI and in establishing the
4 Bank as a settlement bank for credit card transactions. At no time did the Bank's Board of
5 Directors authorize the creation of an "International Affairs Department," approve the
6 establishment of executive positions in the "International Affairs Department" to exercise
7 managerial control of the Bank, or ratify the actions of the "International Affairs Department."

8 3. At all times relevant to this Indictment, Sween Systems, LLC, ("Sween
9 Systems") was a limited liability corporation organized under the laws of the State of Texas that
10 represented itself as a credit card processing company. Sween Systems represented that it
11 maintained its principal place of business in Plano, Texas.

12 4. On or about December 21, 2001, Sween Group, LLC, ("Sween Group")
13 was organized as a limited liability corporation under the laws of the State of Texas. Sween
14 Group represented that it maintained its principal place of business in Plano, Texas. Sween
15 Group was an entity separate and distinct from Sween Systems.

16 5. At all times relevant to this Indictment, BERT DOUGLAS
17 MONTGOMERY, the defendant, represented himself as a wealthy and experienced businessman
18 who sought to purchase a majority interest in the Bank. As of in or about late September 2001,
19 MONTGOMERY periodically represented himself as Chairman of the Board of the Bank. As of
20 in or about December 2001, MONTGOMERY assumed the position of president of the Bank's
21 "International Affairs Department." At no time was MONTGOMERY a member of the Bank's
22 Board of Directors, nor was he ever elected Chairman of the Board, nor appointed by the Board
23 to any executive office at the Bank.

24 6. At all times relevant to this Indictment, DUSEAN BERKICH, the
25 defendant, was a business partner of BERT DOUGLAS MONTGOMERY, the defendant, and
26 worked with him in their effort to purchase a majority interest of the Bank. As of in or about
27 December 2001, BERKICH assumed the position of senior vice president of the "International
28

1 Affairs Department." At no time was BERKICH a member of the Bank's Board of Directors,
2 nor was he appointed by the Board to any executive office at the Bank.

3 7. At all times relevant to this Indictment, THOMAS B. ALDAN, the
4 defendant, was the Chief Executive Officer and the Chairman of the Board of Directors of the
5 Bank. As an officer and director of the Bank, ALDAN had a duty to disclose all transactions to
6 the Bank's Board of Directors.

7 8. At all times relevant to this Indictment, Michael T. Wilson, a co-
8 conspirator not named as a defendant herein, controlled Sween Systems and Sween Group.

9 At certain times relevant in this Indictment, United Forex Exchange held
10 itself out as an investment firm that purported to invest client funds in foreign exchange
11 transactions.

THE SCHEME TO DEFRAUD

A. The Scheme's Unlawful Purposes

14. In or about August 2001, BERT DOUGLAS MONTGOMERY and
15. DUSEAN BERKICH, the defendants, together with others known and unknown, fraudulently
16. sought to obtain control of the Bank through MONTGOMERY's purchase of the majority of the
17. Bank's common stock. MONTGOMERY, BERKICH and others deceived the Bank and the
18. CNMI Commissioner of Banking with respect to MONTGOMERY's status as a bona fide
19. purchaser of the Bank by: (a) misrepresenting MONTGOMERY's source of funds for the stock
20. purchase transactions; (b) concealing their plan to use the Bank's assets to pay for a portion of
21. the acquisition costs; (c) misrepresenting both MONTGOMERY'S financial position and
22. MONTGOMERY'S experience in the banking industry; and (d) concealing their plan to exploit
23. their control of the Bank by enriching themselves and others through fraudulent loans and other
24. transactions.

25 11. To facilitate their plan to fraudulently obtain the Bank's money and
26 property, BERT DOUGLAS MUNTOGOMERY and DUSEAN BERKICH, the defendants, sought
27 to and did deprive the Bank of the honest services of THOMAS B. ALDAN, the defendant, by
28 secretly offering ALDAN money and other things of value, including a higher salary, quarterly

1 bonuses, part ownership of the Bank, part ownership of a company controlled by
2 MONTGOMERY and BERKICH, and arranging an unauthorized and illegal loan from the Bank
3 in the amount of \$504,666. In return, ALDAN authorized, on behalf of the Bank, numerous
4 transactions for MONTGOMERY and BERKICH that were necessary to carry out the scheme,
5 and concealed those transactions from the Bank's Board of Directors. As of early November
6 2001, both through ALDAN, and through the establishment of the "International Affairs
7 Department," MONTGOMERY and BERKICH controlled the Bank.

8 12. Upon gaining control of the Bank, BERT DOUGLAS MONTGOMERY
9 and DUSEAN BERKICH, the defendants, and others, with the assistance of TOMAS B.
10 ALDAN, the defendant, planned to and did obtain the Bank's money and property for themselves
11 and others, including Michael T. Wilson, by causing the Bank to make fraudulent loans,
12 including \$5 million in loans to Sween Systems and a \$260,000 loan to MONTGOMERY.

13 13. In addition to defrauding the Bank through fraudulent loans, after gaining
14 control of the Bank, BERT DOUGLAS MONTGOMERY, DUSEAN BERKICH, the defendants,
15 and others, with the assistance of TOMAS B. ALDAN, the defendant, further exploited such
16 control by, among other things, defrauding a customer of the Bank (the "Bank Customer") out
17 of approximately \$209,280, and defrauding the Bank out of an additional \$240,000 in connection
18 with transactions relating to the Bank Customer.

19 14. BERT DOUGLAS MONTGOMERY, DUSEAN BERKICH and TOMAS
20 B. ALDAN, the defendants, Michael T. Wilson, and others, in carrying out their scheme to
21 defraud, unlawfully obtained money and property from the Bank and the Bank Customer totaling
22 at least approximately \$10.1 million.

23 B. Fraudulent Representations and Transactions To Acquire Control Of The Bank
24 15. Despite repeated representations that BERT DOUGLAS
25 MONTGOMERY, the defendant, was an extremely wealthy businessman, MONTGOMERY and
26 DUSEAN BERKICH, the defendant, as of late November 2001, lacked the cash to close on the
27 purchase of the Bank's stock. In order to induce the Bank to provide funding for the stock
28 purchase transaction, MONTGOMERY, BERKICH and others falsely represented that

1 MONTGOMERY owned a brokerage account in the name of United Forex Exchange (the "UFX
2 Brokerage Account"). MONTGOMERY and BERKICH purported to cause the UFX Brokerage
3 Account to be assigned to the Bank, and further represented that, upon liquidation, the assets in
4 the UFX Brokerage Account would be sufficient to reimburse the Bank for funds it advanced to
5 pay for MONTGOMERY's purchase of the Bank's stock from the selling shareholders.

6 16. On or about December 3, 2001, the Bank, in transactions authorized by
7 TOMAS B. ALDAN, the defendant, advanced \$3,587,886 to several of the selling shareholders.
8 These advances permitted BERT DOUGLAS MONTGOMERY and DUSEAN BERKICH, the
9 defendants, to use the Bank's funds to pay for the stock purchase in the absence of any loan
10 agreement, without the approval of the Bank's Board of Directors, and without providing the
11 Bank with sufficient funds or security to ensure that the Bank would be made whole on the
12 transaction.

13 17. The liquidation of the UFX Brokerage Account yielded \$2.8 million.
14 BERT DOUGLAS MONTGOMERY and DUSEAN BERKICH, the defendants, and others,
15 caused only \$2.6 million of those proceeds to be transferred to the Bank to repay the advances to
16 the selling shareholders. After transferring to the Bank another \$500,000 that MONTGOMERY
17 and BERKICH obtained from the Bank Customer, as alleged more fully in paragraphs 29-32,
18 below, the Bank was left with a shortfall between the advances to the selling shareholders and the
19 funds repaid by MONTGOMERY and BERKICH of approximately \$487,000.

20 18. In or about mid-December 2001, following the transfer of \$3,587,886 of
21 the Bank's money to several selling shareholders, BERT DOUGLAS MONTGOMERY and
22 DUSEAN BERKICH, the defendants, knowing that the Bank would submit information about
23 MONTGOMERY's background and finances to the CNMI Commissioner of Banking for review
24 and approval, caused false and fraudulent information to be provided to the Bank and the CNMI
25 Commissioner of Banking. Among other things, MONTGOMERY and BERKICH, fraudulently
26 concealed the transactions described in paragraphs 13-17 above, including the fact that
27 MONTGOMERY was indebted to United Forex Exchange in the amount of approximately \$2.8
28 million as a result of the liquidation of the securities in the UFX Brokerage Account. In

1 addition, MONTGOMERY and BERKICH falsely represented that MONTGOMERY had
2 substantial experience in the banking industry and that he had previously served on the board of
3 directors of a bank.

4 19. In or about early February 2002, in an effort to repay United Forex
5 Exchange, BERT DOUGLAS MONTGOMERY and DUSEAN BERKICH, the defendants, and
6 others, fraudulently sought to use the Bank's assets to secure a loan for their personal benefit.
7 Specifically, MONTGOMERY, BERKICH and others caused the Bank, in transactions
8 authorized by TOMAS B. ALDAN, the defendant, to transfer assets from the Bank's existing
9 investment account to a new brokerage account at D.A. Davidson & Co., a broker-dealer.
10 MONTGOMERY, BERKICH and others then attempted to use that account as security for a loan
11 to MONTGOMERY from a lender in Dallas, Texas. At no time did the Bank's Board of
12 Directors approve the establishment of a new brokerage account at D.A. Davidson & Co., nor
13 any pledge of the Bank's assets to secure a personal loan to MONTGOMERY.

14 C. The Pseudulent Sween Systems Loans

15 20. In or about October 2001, BERT DOUGLAS MONTGOMERY and
16 DUSEAN BERKICH, the defendants, Michael T. Wilson, and others presented to TOMAS B.
17 ALDAN, the defendant, and certain other employees of the Bank a loan proposal for Sween
18 Systems, pursuant to which, the Bank would loan Sween Systems \$3 million, purportedly for
19 the purpose of Sween Systems' acquisition of two additional companies to expand its existing
20 credit card processing business. In addition pursuant to this proposal, the Bank and Sween
21 Systems would enter into a business arrangement where the Bank would act as "settlement bank"
22 and according to MONTGOMERY, BERKICH, Wilson and others, earn substantial revenue
23 from its relationship with Sween Systems. The Bank's activities as a credit card processing
24 settlement bank were to be administered by the newly formed "International Affairs
25 Department." Neither the loan proposal, nor the related business agreement, was ever presented
26 to or approved by the Bank's Board of Directors.

27 21. In early November 2001, BERT DOUGLAS MONTGOMERY and
28 DUSEAN BERKICH, the defendants, urged TOMAS B. ALDAN, the defendant, and certain

1 other employees of the Bank to fund \$500,000 of the Swoven Systems loan for the purpose of
2 enabling Swoven Systems to go forward with its acquisition of two credit card processing
3 companies. To induce the Bank to make this \$500,000 loan to Swoven Systems,
4 MONTGOMERY, BERKICH and Michael T. Wilson falsely represented that the loan would be
5 secured by \$600,000 in cash owned and controlled by Swoven Systems on deposit at another
6 credit card processing company. In addition, MONTGOMERY fraudulently assured a loan
7 officer of the Bank that ALDAN had authorized disbursement of \$500,000 in loan proceeds in
8 the absence of documentation ordinarily required for a commercial loan. Further, while
9 ALDAN had not initially authorized the disbursement, he later ratified it without first obtaining
10 the proper documentation. ALDAN concealed this \$500,000 loan from the Board of Directors,
11 at no time seeking its approval.

12 22. On or about November 8, 2001, the Bank wired \$500,000 to Swoven
13 Systems' bank in Plano, Texas. Shortly thereafter, Michael T. Wilson fraudulently caused
14 Swoven Systems to disburse the majority of these funds to pay for a variety of expenses unrelated
15 to the acquisition of credit card processing companies.

16 23. On or about December 26, 2001, Michael T. Wilson caused Swoven
17 Group rather than Swoven Systems, the borrower on the loans and the entity obligated to repay
18 the Bank, to enter into a transaction in which Swoven Group acquired an indirect interest in two
19 credit card processing companies.

20 24. In or about early January 2002, BERT DOUGLAS MONTGOMERY and
21 DUSEAN BERKICH, the defendants, and others, urged TOMAS B. ALDAN, the defendant, and
22 certain other officers of the Bank to loan an additional \$4.5 million to Swoven Systems so that it
23 could complete its acquisition of two credit card processing companies. For the purpose of
24 inducing the Bank to make this second loan to Swoven Systems, MONTGOMERY, BERKICH,
25 Wilson and others, among other things:

26 a. Submitted false and fraudulent documentation to the Bank,
27 including a fabricated Swoven Systems tax return and a fictitious Swoven Systems financial
28 statement;

b. Falsely represented that Swyvyn Systems owned and controlled \$8.5 million on deposit with another credit card processing company, and that \$5.6 million of such funds was available to be assigned as collateral for the loan;

9 d. Fraudulently concealed that Wilson had misappropriated the majority of
10 the \$500,000 in loan proceeds that had been disbursed on or about November 8, 2001, and
11 planned to use that portion of the \$4.5 million that was not fraudulently converted for Sweeney
12 Group's benefit for similar expenses unrelated to the acquisition of credit card processing
13 companies.

14 25. On or about January 11, 2002, TOMAS B. ALDAN, the defendant,
15 approved the additional \$4.5 million loan to Sweven Systems, and caused the funds to be
16 transferred by wire from the Bank to the escrow account of Sweven System's attorneys in Plano,
17 Texas. At ALDAN's direction, this second \$4.5 million loan to Sweven Systems was never
18 presented to the Bank's Board of Directors for approval.

D. The Fraudulent \$260,000 Loan To BERT DOUGLAS MONTGOMERY

20 26 In or about early February 2002, BERT DOUGLAS MONTGOMERY, the
21 defendant, applied for a \$260,000 loan from the Bank. TOMAS B. ALDAN, the defendant,
22 approved this loan and, at ALDAN's direction, it was never presented to the Bank's Board of
23 Directors for approval. Among other false and fraudulent representations, MONTGOMERY
24 submitted a materially misleading financial statement that grossly overstated his assets and
25 omitted his \$2.8 million liability to United Forex Exchange. On or about February 8, 2002, at
26 ALDAN's direction, the Bank transferred \$260,000 to an account at the Bank in Montgomery's
27 name.

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U.S. DISTRICT COURT FOR THE N.D. OF ALABAMA

1 E. The Unauthorized And Illegal Loan To TOMAS B. ALDAN

2 27. At all times relevant to the Indictment, the laws of the CNMI required that
3 any loan to an officer or director of the Bank be approved by a two-thirds vote of the Bank's
4 Board of Directors, with all interested directors abstaining.

5 28. In or about January 2002, TOMAS B. ALDAN, the defendant, applied to
6 the Bank for a loan. On or about January 28, 2002, DOUGLAS B. MONTGOMERY, the
7 defendant, purporting to act on behalf of the Bank, directed that \$504,666 in loan proceeds be
8 disbursed to ALDAN. In violation of ALDAN's duty to disclose this transaction, as well as the
9 legal requirement that two-thirds of disinterested directors approve such loan, ALDAN and
10 MONTGOMERY failed to disclose it to the Board, thereby fraudulently concealing a material
11 fact.

12 F. The Fraud On The Bank Customer And The Bank

13 29. On or about December 4, 2001, BERT DOUGLAS MONTGOMERY and
14 DUSEAN BERKICH, the defendants, and others caused the Bank Customer to wire \$500,000
15 from a bank in Hong Kong, China to an account in MONTGOMERY's name at the Bank.
16 MONTGOMERY and BERKICH then caused this \$500,000 to be transferred from
17 MONTGOMERY's account to the Bank to pay back a portion of the funds that
18 MONTGOMERY and BERKICH had fraudulently caused the Bank to advance to the selling
19 shareholders, as alleged in paragraphs 15-17, above.

20 30. On or about December 13, 2001, BERT DOUGLAS MONTGOMERY
21 and DUSEAN BERKICH, the defendants, caused \$50,000 to be repaid to the Bank Customer.

22 31. In or about late December 2001, the Bank Customer demanded repayment
23 of the balance of the Bank Customer's funds. BERT DOUGLAS MONTGOMERY, the
24 defendant, falsely represented to the customer that he would cause \$240,000 to be transferred by
25 wire to Hong Kong, and that \$209,980 would be deposited into the Bank Customer's savings
26 account at the Bank. Despite the fact that a Bank employee noted a \$209,980 deposit in the Bank
27 Customer's savings account passbook, at MONTGOMERY's direction, no such deposit was ever
28 made.

DEA - DC Case 14-34 PR RIO

1 32. On or about January 11, 2002, the Bank Customer again demanded re-
2 payment of the \$240,000 that BERT DOUGLAS MONTGOMERY, the defendant, had
3 previously promised to pay. Without any other assurance that such funds would be repaid,
4 MONTGOMERY, with the assistance of TOMAS B. ALDAN, the defendant, then fraudulently
5 caused the Bank to transfer by wire \$240,000 of its funds to a bank in Hong Kung. Among other
6 false statements, MONTGOMERY falsely represented to the Bank that the \$240,000 wire
7 transfer was issued pending a loan approval to the Bank Customer. ALDAN authorized this
8 transaction and concealed it from the Bank's Board of Directors.

9 THE CONSPIRACY

10 33. From in or about August 2001 continuing to in or about March 2002, in
11 the District of the Northern Mariana Islands, and elsewhere, BERT DOUGLAS
12 MONTGOMERY, DUSEAN BERKICH and TOMAS B. ALDAN, the defendants, together with
13 Michael T. Wilson and others to the Grand Jury known and unknown, unlawfully, wilfully and
14 knowingly did combine, conspire, confederate, and agree together and with each other to commit
15 offenses against the United States, to wit, to commit wire fraud, in violation of Title 18, United
16 States Code, Sections 1343 and 1346.

17 34. It was a part and object of said conspiracy that the defendants, BERT
18 DOUGLAS MONTGOMERY, DUSEAN BERKICH and TOMAS B. ALDAN, together with
19 Michael T. Wilson, and their co-conspirators, unlawfully, wilfully and knowingly, having devised
20 and intending to devise a scheme and artifice to defraud and for obtaining money by means of
21 materially false and fraudulent pretenses, representations and promises, and to deprive the Bank
22 of ALDAN's honest services, would and did cause to be transmitted in interstate and foreign
23 commerce by means of a wire communication, certain writings, signs, signals, and sounds for the
24 purpose of executing such scheme and artifice, in violation of Title 18, United States Code.
25 Sections 1343 and 1346.

26 Means and Methods Of The Conspiracy

27 35. Among the means and methods by which BERT DOUGLAS
28 MONTGOMERY, DUSEAN BERKICH and TOMAS B. ALDAN, the defendants, together with

1 Michael T. Wilson and others known and unknown, would and did carry out the conspiracy were
2 the following:

3 a. BERT DOUGLAS MONTGOMERY and DUSEAN BERKICH,
4 the defendants, and their co-conspirators, made materially false and fraudulent representations
5 and omissions to the Bank and to the CNMI Commissioner of Banking for the purpose of
6 acquiring control of the Bank.

7 b. BERT DOUGLAS MONTGOMERY and DUSEAN BERKICH,
8 the defendants, and their co-conspirators, offered to and gave TOMAS B. ALDAN, the
9 defendant, money and other things of value in return for ALDAN's assistance in gaining control
10 of the Bank and concealing their activities from the Bank's Board of Directors, thereby depriving
11 the Bank of ALDAN's honest services.

12 c. BERT DOUGLAS MONTGOMERY, DUSEAN BERKICH and
13 TOMAS B. ALDAN, the defendants, and their co-conspirators, fraudulently sought to and did
14 use the assets of the Bank to pay for the acquisition of the Bank's stock.

15 d. BERT DOUGLAS MONTGOMERY, DUSEAN BERKICH and
16 TOMAS B. ALDAN, the defendants, and their co-conspirators, including Michael T. Wilson,
17 made materially false and fraudulent representations and omissions to the Bank for the purpose
18 of causing the Bank to loan its funds to MONTGOMERY, BERKICH, ALDAN, Wilson and
19 persons and entities associated with them.

20 e. BERT DOUGLAS MONTGOMERY and DUSEAN BERKICH,
21 the defendants, and their co-conspirators, made false and fraudulent representations to the Bank
22 Customer for the purpose of obtaining the Bank Customer's money and property.

23 f. BERT DOUGLAS MONTGOMERY, DUSEAN BERKICH and
24 TOMAS B. ALDAN, the defendants, and their co-conspirators, including Michael T. Wilson,
25 made and caused to be made false and misleading entries in the books and records of the Bank
26 for the purpose of inducing the Bank to advance and disburse funds for their benefit.

27 g. BERT DOUGLAS MONTGOMERY, DUSEAN BERKICH and
28 TOMAS B. ALDAN, the defendants, and their co-conspirators, including Michael T. Wilson,

1 used facilities of interstate and foreign commerce, including interstate and international wire
2 transmissions, in furtherance of the object of the conspiracy.

Overt Acts

4 36. In furtherance of said conspiracy and to effect the illegal objects thereof
5 the defendants and their co-conspirators committed the following overt acts, among others, in the
6 District of the Northern Mariana Islands and elsewhere:

7 a. On or about September 30, 2001, BERT DOUGLAS
8 MONTGOMERY, the defendant, tendered a Bank of Saipan employment agreement to TOMAS
9 B. ALDAN, the defendant.

b. On or about November 6, 2001, DUSEAN BERRICK, the defendant, prepared a collateral assignment that purported to assign \$600,000 to the Bank, and caused it to be provided to the Bank at its headquarters in Chalan Kanna, Sajwan, CNMI.

13 c. On or about November 6, 2001, Michael T. Wilson executed a
14 collateral assignment that purported to assign \$600,000 to the Bank, and caused it to be provided
15 in the Bank at its headquarters in Chalan Kanoa, Saipan, CNMI.

16 d. On or about November 8, 2001, BERT DOUGLAS
17 MONTGOMERY, the defendant, at the Bank's headquarters in Chalan Kanoa, Saipan, CNMI,
18 falsely told a Bank loan officer that TOMAS B. ALDAN, the defendant, had authorized the
19 disbursement of \$500,000 to Sween Systems.

e. On or about November 8, 2001, BERT DOUGLAS MONTGOMERY and DUSEAN RERKICH, the defendants, caused the Bank to transfer by wire \$500,000 to Sweencon Systems' bank in Plano, Texas.

23 f. On or about November 19, 2001, BERT DOUGLAS
24 MONTGOMERY, the defendant, executed stock purchase agreements with several shareholders
25 of the Bank.

26 g On or about December 3, 2001, RBERT DOUGLAS
27 MONTGOMERY, DUSEAN BERKICH and TOMAS ALDAN, the defendants, caused the Bank
28 to advance \$3,587,886 in Bank funds to the selling shareholders.

1 h. On or about December 11, 2001, BERT DOUGLAS
2 MONTGOMERY and DUSEAN BERKICH, the defendants, caused false information
3 concerning MONTGOMERY's background and finances to be submitted to the Bank and the
4 CNMI Commissioner of Banking.

i. On or about January 3, 2002, Michael T. Wilson faxed an assignment of collateral from Plano, Texas to the Bank's headquarters in Chalan Kanoa, Saipan, CNMI.

j. On or about January 9, 2002, DUSEAN BERKICH, the defendant,
at the Bank's headquarters in Chalan Kanoa, Saipan, CNMI, had a conversation with the Bank's
accounting manager regarding the availability of cash to fund the Sweven Systems loan.

11 k. On or about January 11, 2002, BERT DOUGLAS
12 MONTGOMERY and DUSEAN BERKICH, the defendants, caused the Bank to transfer by wire
13 \$4.5 million to the attorney escrow account for Sween Systems' attorney at a bank in Plano,
14 Texas.

15 1. On or about January 11, 2002, BERT DOUGLAS
16 MONTGOMERY and TOMAS B. ALDAN, the defendants, caused the Bank to transfer by wire
17 \$240,000 to Hang Seng Bank, Hong Kong, China.

18 (Title 18, United States Code, Sections 371, 1343 and 1346).

COUNTS TWO THROUGH FOUR

WIRE FRAUD

37. The grand jury realleges, adopts, and incorporates by reference herein, the allegations contained in paragraphs one (1) through thirty-two (32) as if fully set forth herein.

24 38. On or about the dates set forth below, in the District of the Northern
25 Mariana Islands and elsewhere, BERT DOUGLAS MONTGOMERY and DUSEAN BERKICH,
26 the defendants, unlawfully, wilfully and knowingly, having devised and intending to devise a
27 scheme and artifice to defraud and for obtaining money by means of materially false and
28 fraudulent pretenses, representations, and promises, for the purpose of executing such scheme

1 and artifice, knowingly transmitted and caused to be transmitted in interstate and foreign
 2 commerce certain signs, writings, signals, pictures, and sounds by means of wire communication,
 3 that is, the wire communications in interstate and foreign commerce set forth in each of Counts
 4 Two through Four:

<u>COUNT</u>	<u>DATE</u>	<u>WIRE COMMUNICATION</u>
TWO	November 8, 2001	Wire transfer instructions communicated via interstate wire from the Bank of Saipan, Saipan, CNMI, to the Federal Reserve Bank in San Francisco, California directing the transfer by wire of \$500,000 to Legacy Bank of Texas, Plano, Texas.
THREE	December 20, 2001	Faximile transmission of Swover Systems fax returns from Plano, Texas to the Bank of Saipan, Saipan, CNMI.
FOUR	January 11, 2002	Wire transfer instructions communicated via interstate wire from the Bank of Saipan, Saipan, CNMI, to the Federal Reserve Bank in San Francisco, California directing the transfer by wire of \$4.5 million to North Dallas Bank, Plano, Texas.

(Title 18, United States Code, Sections 1343 and 2).

COUNT FIVE

WIRE FRAUD, DEPRIVATION OF HONEST SERVICES

39. The grand jury alleges, adopts, and incorporates by reference herein, the
 40 allegations contained in paragraphs one (1) through thirty-two (32) as it fully set forth herein.

41. On or about January 11, 2002, in the District of Northern Mariana Islands
 42 and elsewhere, BERT DOUGLAS MONTGOMERY and TOMAS B. ALDAN, the defendants,
 43 unlawfully, willfully, and knowingly, having devised and intending to devise a scheme and
 44 artifice to defraud and for obtaining money by means of materially false and fraudulent pretenses,
 45 representations, and promises, namely, a scheme and artifice to deprive the Bank of ALDAN's
 46 honest services, transmitted and caused to be transmitted by means of wire communication in
 47 interstate and foreign commerce, writings, signs, signals, and sounds for the purpose of executing
 48 such scheme and artifice, namely, wire transfer instructions communicated via interstate wire

1 from the Bank of Saipan, Saipan, CNMI, to the Federal Reserve Bank in San Francisco,
2 California directing the transfer by wire of \$240,000 to Hang Seng Bank, Hong Kong, China.
3 (Title 18, United States Code, Sections 1343, 1346 and 2).

4 COUNT SIX

5 MONEY LAUNDERING CONSPIRACY

6 41. The grand jury re alleges, adopts, and incorporates by reference herein, the
7 allegations contained in paragraphs one (1) through thirty-two (32) as if fully set forth herein.
8 42. From in or about October 2001 continuing to in or about March 2002, in
9 the District of the Northern Mariana Islands, and elsewhere, BERT DOUGLAS
10 MONTGOMERY and DUSBAN BERKICH, the defendants, together with others to the Grand
11 Jury known and unknown, knowing that the property involved in financial transactions
12 represented the proceeds of some form of unlawful activity, did knowingly and intentionally
13 conspire to conduct such financial transactions affecting interstate and foreign commerce, which
14 transactions in fact involved the proceeds of specified unlawful activity, namely, wire fraud, in
15 violation of Title 18, United States Code, Section 1343, and securities fraud, in violation of Title
16 15, United States Code, Sections 78j(b) and 78ff, committed in connection with the fraudulent
17 operation of United Forex Exchange, and with the intent to promote the carrying on of specified
18 unlawful activity, namely, the wire fraud scheme described in Count One of this Indictment.
19 (Title 18, United States Code, Section 1956(h)).

20 COUNTS SEVEN THROUGH NINE

21 MONEY LAUNDERING

22 43. On or about the dates set forth below, in the District of the Northern
23 Mariana Islands, and elsewhere, BERT DOUGLAS MONTGOMERY and DUSBAN BERKICH,
24 the defendants, together with others to the Grand Jury known and unknown, knowing that the
25 property involved in financial transactions, namely, the financial transactions set forth below in
26 Counts Seven through Nine, represented the proceeds of some form of unlawful activity, did
27 knowingly and intentionally conduct and attempt to conduct such financial transactions affecting
28 interstate and foreign commerce, which in fact involved the proceeds of specified unlawful

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1 activity, namely, wire fraud, in violation of Title 18, United States Code, Section 1343, and
 2 securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, committed
 3 in connection with the fraudulent operation of United Forex Exchange, and with the intent to
 4 promote the carrying on of specified unlawful activity, namely, the wire fraud scheme described
 5 in Count One of this Indictment:

<u>COUNT</u>	<u>DATE</u>	<u>FINANCIAL TRANSACTION</u>
SEVEN	November 28, 2001	Wire transfer of \$1.8 million from Southwest Securities, Dallas, Texas to the Bank of Saipan, Saipan, CNMI via the Federal Reserve Bank in San Francisco, California.
EIGHT	December 9, 2001	Wire transfer of \$300,000 from Southwest Securities, Dallas, Texas to the Bank of Saipan, Saipan, CNMI via the Federal Reserve Bank in San Francisco, California.
NINE	December 10, 2001	Wire transfer of \$700,000 from Southwest Securities, Dallas, Texas to the Bank of Saipan, Saipan, CNMI via the Federal Reserve Bank in San Francisco, California.

13 (Title 18, United States Code, Sections 1956(a)(1)(A)(i)and 2).

PORFEITURE ALLEGATION

14 44. The grand jury realleges, adopts, and incorporates by reference herein, the
 15 allegations contained in paragraphs one (1) through thirty-two (32) as if fully set forth herein.

16 45. Upon conviction of one or more of the offenses alleged in Counts
 17 One through Five of this Indictment, defendants BERT DOUGLAS MONTGOMERY,
 18 DUSEAN BERKICH, and TOMAS B ALDAN shall forfeit to the United States pursuant to
 19 Title 18, United States Code, Section 281(a)(1)(C) and Title 28 United States Code, Section
 20 2461(c), any property constituting or derived from proceeds traceable to said violations,
 21 including but not limited to a sum of money not less than \$10.1 million in United States
 22 currency, representing the amount of proceeds obtained as a result of the offenses, namely the
 23 conspiracy to commit wire fraud charged in Count One, and the wire frauds charged in Counts
 24 Two through Five, for which the defendants are jointly and severally liable, which sum includes,
 25 but is not limited to all right, title and interest of the aforementioned defendants in:

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1 it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) as
2 incorporated by Title 18, United States Code, Section 982(b), to seek forfeiture of any other
3 property of said defendants up to the value of the forfeitable property described above.

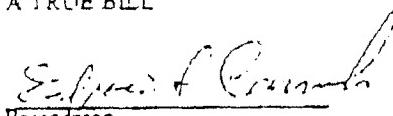
4 (Title 18, United States Code, Section 981(a)(1)(C) and
Title 28 United States Code, Section 2461(c))
5

6 DATED this 14th day of August, 2002.

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A TRUE BILL

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Foreperson

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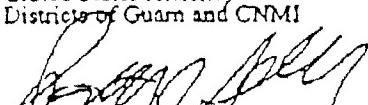
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FREDERICK A. BLACK
United States Attorney
Districts of Guam and CNMI

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PATRICK J. SMITH
Assistant United States Attorney

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** TOTAL

EXHIBIT 16

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F I L E D
Clerk
District Court

JAN - 5 2007

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

UNITED STATES OF AMERICA,) Criminal No. 02-00010
Plaintiff)
v.) ORDER DENYING
BERT DOUGLAS MONTGOMERY,) MOTION OF DEFENDANT
Defendant) MONTGOMERY TO BE
) RE-SENTENCED
)
)

THIS MATTER was remanded by the U.S. Court of Appeals for the Ninth Circuit on August 29, 2006, with directions that this court "obtain the views of counsel before it decides whether Ameline re-sentencing is warranted." United States v. Montgomery, No. 05-10587 (9th Cir. Aug. 29, 2006). Final judgment was entered September 20, 2006, and received by this court on September 28, 2006.

1 On June 18, 2003, defendant Montgomery was convicted by a jury of one
2 count of conspiracy to commit wire fraud, three counts of wire fraud, one count of
3 wire fraud (deprivation of honest services), three counts of money laundering, and
4 one count of conspiracy to launder money.

5 On December 31, 2003, defendant Montgomery was sentenced to 240 months
6 in prison and ordered to pay restitution, jointly and severally with his co-defendants,
7 to the Bank of Saipan in the amount of \$5,273,643.70 and to an individual defraudee
8 in the amount of \$209,980.00.

9 By memorandum opinion dated July 27, 2005, defendant Montgomery's
10 conviction was affirmed, with a limited remand to this court "to allow the district
11 court to determine 'whether the sentence imposed would have been materially
12 different had the district court known that the sentencing guidelines were advisory'.
13

14 United States v. Ameline 409 F.3d 1073, 1074 (9th Cir. 2005) (*en banc*)."

15 On August 29, 2005, this court issued an "Order After Limited Remand
16 Denying Resentencing."

17 In an Opinion filed August 29, 2006, the matter was again remanded by the
18 Ninth Circuit, with the directions quoted in the first paragraph of this order.
19

20 On September 29, 2006, the court issued an order "that counsel for plaintiff
21 and defendant shall submit written comments addressing any factors---not only
22 within the advisory sentencing guidelines, but also those encompassed by the goals
23

1 and purposes of sentencing as reflected in 18 U.S.C. § 3553(a)---that counsel believes
2 warrants re-sentencing of this defendant.” (Docket No. 333). The court gave the
3 parties until October 20, 2006, to file their submissions.
4

5 On October 18, 2006, the parties stipulated to continue this matter for three
6 months, “until after January, 2007.” In an order dated October 19, 2006, the court
7 denied the joint motion to continue for that length of time. (Docket No. 336)

9 However, by order dated October 20, 2006, the court granted both counsel a thirty-
10 day extension of time in which to file memoranda addressed to the issue of re-
11 sentencing. In that order, the court stated that the “motion to set this matter for re-
12 sentencing is taken under advisement until the court has had the opportunity to
13 review and consider the submissions.” (Docket No. 338)
14

16 Defendant filed his memorandum and attachments on November 19, 2006.
17 (Docket Nos. 339-340) Plaintiff’s submission was filed November 20, 2006. (Docket
18 No. 341)
19

20 The court has read all filings in their entirety and its sentence would not have
21 been different, let alone materially different, had it known at the time of the original
22 sentencing that the sentencing guidelines were advisory. Likewise, the court
23 concludes that its original sentence took into account, as the court believes every
24 sentence must, those factors set out in 18 U.S.C. § 3553(a).
25
26

1 As the court noted in its order of August 29, 2005, and re-adopts here:

2 This defendant's primary role in the intentional fraud perpetrated on the
 3 Bank of Saipan resulted in direct injury to thousands of bank depositors,
 4 including the Commonwealth government, all of whom lost access to
 5 their savings. The indirect injury caused to the families of individual
 6 account holders and to the creditors of business account holders was
 7 significant and still reverberates in the community as the Bank has
 8 continued in receivership since May of 2002. The cold, calculating
 9 nature of the crime and the financial losses and inconvenience caused to
 10 so many victims warranted the sentence imposed.

11 The court's position remains unchanged as to the justification for its original
 12 sentence, which was stated on the record on December 31, 2003.¹ Defendant's claim
 13 that no depositor suffered any loss during the time the bank was under receivership is
 14 unsupported by any documentation. More important to the court, though, is that the
 15 need for the receivership was due to the actions of this defendant. The court cannot
 16 specifically quantify the harm to the Bank of Saipan's depositors by their inability to
 17 access their accounts, or the effect on the Bank's stability and soundness by its having

19 To the extent that plaintiff is concerned that the court was not precise enough in its
 20 findings during sentencing, the court reiterates what it believed it had sufficiently articulated
 21 before by its adoption of the pre-sentence report: First, that defendant Montgomery hindered the
 22 investigation and prosecution by lying to Federal Bureau of Investigation Agent Hewitt on March
 23 2, 2002, about his personal background, his wealth, his role in the Swevern Systems loan, and his
 24 involvement in the loan transactions. Other witnesses confirmed defendant Montgomery's false
 25 statements. Second, as set out in the pre-sentence report provided to the court and counsel,
 26 defendant Montgomery perjured himself repeatedly during the trial. By adopting the pre-
 sentence report, the court's intention and belief was that it had found by a preponderance of the
 evidence that defendant Montgomery had testified falsely under oath about material matters and
 that his testimony was willful, intentional, and intended to deceive the finders of fact. There was
 no indication that defendant Montgomery was simply mistaken, that he was confused by events,
 or that he suffered from a faulty memory.

1 to expend its limited resources on sizeable attorney's fees, or the lingering reticence
2 of potential customers to make use of the Bank's services. It should be apparent that
3 great harm was done to the Bank and this community by defendant and his
4 confederates.

5 As to the factors set out in 18 U.S.C. § 3553(a), the court continues to believe
6 that defendant Montgomery's sentence was sufficient, but not greater than necessary,
7 to meet those factors. The "nature and circumstances of the offense and the history
8 and characteristics of the defendant" were taken into account by the pre-sentencing
9 report. The court was fully aware of defendant's age, health, and personal
10 characteristics. As to defendant's age, the court concluded that society would not be
11 served by applying a sentencing "discount" for this middle-aged criminal. Medical
12 care will be available to defendant throughout his incarceration.

13 The sentence imposed reflected the seriousness of the offense in this small
14 community; to have imposed a materially different sentence would not have met the
15 goal of promoting respect for the law and defendant's sentence provided just
16 punishment for the harm inflicted by him.

17 Defendant's sentence will deter this criminal from committing other acts of
18 fraud and send a strong message to other potential confidence men that the citizens
19 and residents of the Commonwealth will be protected from predators of their kind.

20 As ordered at sentencing, defendant Montgomery will be required to make use

1 of at least some of the educational opportunities available during incarceration. As
2 mentioned above, he will receive any medical treatment he requires.
3

4 FOR THE FOREGOING REASONS, the court declines to re-sentence
5 defendant Bert Douglas Montgomery. His sentence would not have been materially
6 different had this court known that the sentencing guidelines were advisory at the
7 time of his sentencing.
8

9 IT IS SO ORDERED.

10 DATED this 5th day of January, 2007.
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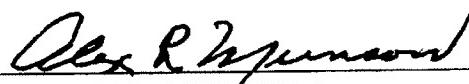
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ALEX R. MUNSON
Judge